

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION

**Kelli R. Cerven, Keith O. Cerven,
Teresa M. Cerven, CFW Vending LLC,
and SHGI Corporation,**

Plaintiffs;

v.

**Blue Cross and Blue Shield of North
Carolina and Blue Cross and Blue
Shield Association,**

Defendants.

Case No. 5:12-cv-17-RLV-DCK

Judge Richard L. Voorhees
Magistrate Judge David C.
Keesler

BLUE CROSS AND BLUE SHIELD ASSOCIATION'S MOTION TO DISMISS

David J. Zott, P.C.
Daniel E. Laytin
Ian R. Conner
KIRKLAND & ELLIS LLP
300 N. LaSalle Street
Chicago, IL 60654
Telephone: (312) 862-2000
Telecopier: (312) 862-2200

James T. Williams, Jr. (#4758)
Jennifer K. Van Zant (#21280)
BROOKS, PIERCE, MCLENDON,
HUMPHREY & LEONARD LLP
2000 Renaissance Plaza
230 North Elm Street
Greensboro, NC 27401
Telephone: (336) 373-8850
Telecopier: (336) 378-1001

*Counsel for Defendant Blue Cross and
Blue Shield Association*

April 30, 2012

Defendant Blue Cross and Blue Shield Association ("BCBSA"), through counsel, hereby moves, pursuant to Federal Rule of Civil Procedure 12(b)(6), to dismiss this action, for the reasons set forth in the Brief in Support of BCBSA's Motion to Dismiss filed contemporaneously herewith.

Respectfully submitted, this 30th day of April, 2012.

/s/Daniel E. Laytin

David J. Zott, P.C.

Daniel E. Laytin

Ian R. Conner

KIRKLAND & ELLIS LLP

300 N. LaSalle Street

Chicago, IL 60654

Telephone: (312) 862-2000

Telecopier: (312) 862-2200

James T. Williams, Jr. (#4758)

Jennifer K. Van Zant (#21280)

BROOKS, PIERCE, MCLENDON,

HUMPHREY & LEONARD LLP

2000 Renaissance Plaza

230 North Elm Street

Greensboro, NC 27401

Telephone: (336) 373-8850

Telecopier: (336) 378-1001

*Counsel for Defendant Blue Cross and
Blue Shield Association*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Larry McDevitt
lmcdevitt@vwlawfirm.com
David Wilkerson
dwilkerson@vwlawfirm.com
THE VAN WINKLE LAW FIRM
11 N. Market Street
Asheville, NC 28801
(828) 258-2991
(828) 257-2767 FAX

Michael D. Hausfeld
mhausfeld@hausfeldllp.com
HAUSFELD LLP
1700 K Street NW, Suite 650
Washington, DC 20006
(202) 540-7200
(202) 540-7201 FAX

William A. Isaacson
wisaacson@bsfllp.com
BOIES, SCHILLER & FLEXNER LLP
5301 Wisconsin Avenue NW
Washington, DC 20015
(202) 237-2727
(202) 237-6131 FAX

J. Michael Malone
mmalonelaw@aol.com
HENDREN & MALONE, PLLC
4600 Marriott Drive, Suite 150
Raleigh, NC 27612
(919) 420-7867
(919) 420-0475 FAX

Attorneys for Plaintiffs

Daniel R. Taylor, Jr.
dtaylor@kilpatricktownsend.com
Adam H. Charnes
acharnes@kilpatricktownsend.com
KILPATRICK TOWNSEND &
STOCKTON LLP
1001 W. Fourth Street
Winston-Salem, NC 27101-2400
(336) 607-7300
(336) 607-7500 FAX

John Robert Robertson
robby.robertson@hoganlovells.com
HOGAN LOVELLS US LLP
555 Thirteenth Street, NW
Washington, DC 20004
(202) 637-5600
(202) 637-5910 FAX

Emily M. Yinger
emily.yinger@hoganlovells.com
N. Thomas Connally
tom.connally@hoganlovells.com
HOGAN LOVELLS US LLP
Park Place II
7930 Jones Branch Drive
McLean, VA 22102
(703) 610-6100
(703) 610-6200 FAX

*Attorneys for Defendant Blue Cross Blue Shield of
North Carolina*

/s/ Daniel E. Laytin

Daniel E. Laytin